

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS:**

**MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES**

2004 OCT 15 P 4: 26

AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission

**DOCKETED**

OCT 15 2004

DOCKETED BY	<i>CR</i>
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In the matter of:

**VICTOR MONROE STOCKBRIDGE  
[CRD # 1233627] and G. IRENE  
STOCKBRIDGE (husband and wife)**

**61 Rufous Lane  
Sedona, Arizona 86336-7177**

**Respondents.**

DOCKET NO. S-03465A-02-0000

**RESPONDENTS' RESPONSE TO  
VIRGINIA DUNCAN'S REQUEST FOR  
PROTECTIVE ORDER AND OBJECTION  
TO SUBPOENA**

Respondents Victor Monroe and G. Irene Stockbridge ("Stockbridge"), by and through their attorneys, respectfully submit this Response to Virginia Duncan's Request for Protective Order and Objection to Subpoena (the "Response"). Ms. Duncan's request for a protective order should be denied and she must be ordered to comply with the subpoena because (i) as a matter of law, most of the information sought by Respondents is not protected by the attorney client privilege and no justification exists for Ms. Duncan's failure to produce this information, (ii) any privilege which may have existed with respect to the requested documents has been waived, (iii) Ms. Duncan has not identified how the request is unduly burdensome, and (iv) Ms. Duncan is not entitled to her hourly fee as an attorney for time incurred responding to the subpoena, nor the filing of the objection.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND.**

This case is the product of a dispute that arose four years ago between two professionals with whom Susan N. Coleman consulted to assist her with her estate planning, investment and

1 philanthropic goals. Ms. Coleman generously wanted to donate to charities through the use of a  
2 community foundation. Her estate-planning attorney, Virginia Duncan ("Ms. Duncan"), wanted  
3 Ms. Coleman to donate through the Arizona Community Foundation ("ACF").<sup>1</sup>

4 Instead of donating through Ms. Duncan's preferred foundation, Ms. Coleman decided in  
5 August 2000 to donate through the American Foundation For Charitable Support ("AFCS"). Ms.  
6 Coleman found the AFCS through Stockbridge, who was then a registered representative of  
7 SunAmerica Securities, Inc. ("SunAmerica") in Sedona. Ms. Coleman had been investing through  
8 SunAmerica since the early 1990s.

9  
10 Ms. Duncan was apparently upset that Ms. Coleman followed Stockbridge's advice instead  
11 of her's, so in the fall of 2000, Ms. Duncan began her efforts to undo what Ms. Coleman had  
12 expressly wanted to do.<sup>2</sup> This proceeding is the culmination of Ms. Duncan's efforts.  
13 Ms. Duncan's repeated complaints, over Ms. Coleman's objections, ultimately resulted in the  
14 Securities Division bringing this action. Now, after sharing Ms. Coleman's confidential  
15 information with anyone who would listen, again, all without her client's knowledge or  
16 permission,<sup>3</sup> she seeks to invoke the "attorney-client" privilege to prevent Stockbridge from  
17 defending himself against allegations that are based on Ms. Duncan's concerted effort to punish  
18 Stockbridge for suggesting that Ms. Coleman make charitable contributions to an organization  
19 other than the one she was affiliated with.  
20

21 The record demonstrates that all interested parties, including Ms. Duncan and  
22  
23

24 <sup>1</sup> In 2002, Duncan began serving on the Board of Directors of one of ACF's affiliate organizations, the Yavapai  
County Community Foundation ("YCCF"), which receives its funding from ACF.

25 <sup>2</sup> See Letter dated May 10, 2001 from Virginia Duncan to the Office of the Attorney General (the "May 10 Letter") a  
copy of which is attached hereto as Exhibit "1."

26 <sup>3</sup> Ms. Duncan admits in the May 10th letter that her actions were being taken, "without Sue's knowledge or  
27 permission." In addition, Ms. Coleman had previously instructed Ms. Duncan, in writing, to "discontinue your Q-ing  
of Victor S. concerning our investment relationship." See Letter from Ms. Coleman to Ms. Duncan, a copy of which is  
attached hereto as Exhibit "2."

Ms. Coleman's family members, believed at the time that Ms. Coleman made the financial decisions at issue that she was capable and competent to make those decisions. Indeed, Ms. Duncan attended a meeting between Ms. Coleman and ACF where ACF was soliciting Ms. Coleman to donate to that organization. That meeting occurred on March 9, 2000. The transactions at issue in this case occurred between March and August 2000. Evidently Ms. Duncan felt that Ms. Coleman was competent enough to meet with ACF yet at the same time, not competent to meet with Mr. Stockbridge. Ms. Duncan has repeatedly discussed these matters with persons other than her client, vitiating any claim to confidentiality or privilege, and she should not be allowed to hide behind the privilege now to prevent Stockbridge from obtaining information relevant to this proceeding and likely to be exculpatory.

## II. THE SUBPOENAED DOCUMENTS.

A major issue in this proceeding is the mental state of Ms. Coleman at the time the investments at issue were made. As her attorney, Ms. Duncan had numerous conversations and meetings with Ms. Coleman during the relevant time frame. Evidence related to these meetings bears directly on the mental state of Ms. Coleman.

The Subpoenaed documents are relevant and the subpoena was reasonably tailored to uncover relevant information. Furthermore, most of the requests do not involve any claim of privilege. The requested documents include:

1. All documents relating to your representation of Susan N. Coleman and the preparation of the Susan N. Coleman Revocable Trust including, but not limited to, the following:
  - a. All invoice and billing statements for legal work performed in connection with the representation;

- b. The Trust document, including all drafts;
- c. All correspondence to and from Ms. Coleman;
- d. All correspondence to and from:
  - i. Richard or Betty Mooney;
  - ii. Sandy Moriarty;
  - iii. LaVerne W. Smith;
  - iv. Victor Monroe Stockbridge;
  - v. The Arizona Attorney General;
  - vi. AIG SunAmerica Capital Services;
  - vii. The Arizona Corporation Commission;
  - viii. Any annuity company or other investment company regarding Ms. Coleman or the Trust's investment;
  - ix. The American Foundation for Charitable Support (or Benson Schaub);
  - x. PNC Bank or PNC Advisors;
  - xi. Or any other individual or entity regarding Susan N. Coleman;

2. All documents relating to any other legal services performed for Susan N. Coleman or the Trust.

3. All documents provided to the Arizona Corporation Commission or the Arizona Securities Division regarding Ms. Coleman, her trust or Stockbridge.

**III. MS. DUNCAN SHOULD BE ORDERED TO COMPLY WITH THE SUBPOENA.**

Ms. Duncan's substantive objections to the Subpoena are (i) that she is prohibited from complying with the Subpoena by Ethical Rule 1.6, and (ii) that the attorney-client privilege

prevents disclosure of the information. As outlined below, these arguments fail. First, E.R. 1.6 actually allows disclosure of otherwise confidential information pursuant to a valid subpoena. In addition, the privilege arguments raised by Ms. Duncan are not well grounded. Much of the information requested is in no way covered by the attorney-client privilege. Of the documents arguably covered by the privilege, the privilege has been waived. Therefore, the request for a protective order should be denied and Ms. Duncan should be ordered to comply with the Subpoena.

**A. Ethical Rule 1.6 allows disclosure of otherwise confidential information pursuant to a valid subpoena.**

Ms. Duncan relies upon E.R. 1.6 as a reason for objecting to the subpoena. However, E.R. 1.6 is intended only to prevent lawyers from voluntarily breaching their duty to maintain client confidences. It is not intended to be a shield from properly issued subpoenas.

The rule provides:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c), or (d).
- (d) A lawyer may reveal such information relating to the representation of a client to the extent the lawyer reasonably believes necessary: . . . to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the lawyer to disclose such information.

17 A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof. Conduct, ER 1.6. Commentators have also noted that this provision extends to the duty to respond to a subpoena. “[D]isclosure of client confidences is appropriate: . . . to comply with a court order, such as a subpoena, directing the lawyer to disclose such information.” See David D. Dodge, *Lawyers as Police?*, Arizona Attorney February 2004 at p. 2.

Ms. Duncan cannot avoid the properly issued subpoena, or further order of this tribunal by reliance on ER 1.6.

**B. Most of the documents requested are clearly not covered by the attorney-client privilege.**

In her objection to the subpoena, Ms. Duncan essentially concedes that many of the documents requested are not covered by the attorney-client privilege. See Objection at p. 2 (identifying only 3 of the 16 requests as specifically involving the application of the attorney-client privilege.) The attorney-client privilege extends only to communications made by the client in confidence for purposes of obtaining legal advice. Granger v. Wisner, 134 Ariz. 377, 379, 656 P.2d 1238, 1240 (1982) ("the [attorney-client] privilege protects only confidential communications between a client and his or her attorney.")

Clearly, most of the requests do not involve communications between Ms. Duncan and Ms. Coleman. Rather, the requests call for communications between Ms. Duncan and third parties. The attorney-client privilege simply does not attach to such communications.

Specifically, Requests 1(d)(i)-1(d)(xi) do not implicate the attorney-client privilege and Ms. Duncan should be ordered to produce any documents responsive to these requests immediately.

Ms. Duncan does not identify any specific objection to Request No. 3 in her objection. If Ms. Duncan has any information that falls into this category, she should be ordered to produce it immediately.

**C. Ms. Duncan should be ordered to produce the documents that would otherwise be covered by the attorney client privilege.**

Ms. Duncan identified the following Requests as being violative of the attorney-client privilege:

1 1(a). All invoice and billing statements for legal work performed in connection  
2 with the representation;

3 1(c) All correspondence to and from Mrs. Coleman; and

4 2 All documents relating to any other legal services performed for Susan N.  
5 Coleman or the Trust.

6 See Objection at p. 2. However, as demonstrated below, these items are either not covered by the  
7 attorney-client privilege, or the privilege has been waived with respect to them.

8  
9 **i. The Billing Records are not privileged.**

10 As an initial matter, the attorney billing records requested in the challenged subpoena are  
11 not protected by the attorney-client privilege. The Ninth Circuit has stated that “[o]ur decisions  
12 have recognized that the identity of the client, the amount of the fee, the identification of payment  
13 by case file name, and the general purpose of the work performed are usually not protected from  
14 disclosure by the attorney-client privilege.” Clarke v. American Commerce Nat’l Bank, 974 F.2d  
15 127, 129 (9th Cir.1992). As a result, Ms. Duncan’s objection to production of these documents is  
16 not well taken. These documents should be produced.

17  
18 In addition to lack of privilege, Ms. Duncan has waived any right to claim privilege with  
19 respect to the billing statements. At least some of these documents have previously been disclosed  
20 to the Division.<sup>4</sup> Ms. Duncan should be ordered to produce these documents.

21 **ii. Any claim to privilege or confidentiality that may have, at one**  
22 **time, existed has been waived by the conduct of Ms. Coleman’s**  
23 **agents including Ms. Duncan.**

24 The attorney-client privilege is not inviolate, it may be waived. See State v. Hampton, 208  
25 Ariz. 241, \_\_\_, 92 P.3d 871, 873 (App. 2004). The information sought by Stockbridge is no longer  
26

27 <sup>4</sup> See Billing statement dated, 1/24/01, a copy of which is attached hereto as Exhibit “3.”

1 privileged, assuming it once was, because the privilege has been waived for two reasons. First,  
2 Ms. Duncan has repeatedly made statements concerning Ms. Coleman affairs, including her  
3 representation of Ms. Coleman and her mental state, and acuity to third parties, including  
4 Stockbridge. Second, Ms. Coleman and her agents have put the privileged information at issue by  
5 filing a separate lawsuit against Mr. Stockbridge. They seek now to exploit the result obtained in  
6 this administrative proceeding by denying Stockbridge the evidence that would show  
7 Ms. Coleman's true mental state at the time the investments were made. All of this is being done  
8 to benefit the lawsuits<sup>5</sup> filed by Ms. Coleman and/or her agents against Stockbridge.

9  
10 **a. Ms. Duncan has repeatedly shared Ms. Coleman's supposedly**  
11 **confidential information with third parties.**

12 There is nothing in the record that indicates that any physician or professional advisor  
13 questioned Ms. Coleman's competence during this period. To the contrary, throughout 2000 and  
14 well into 2001, Ms. Duncan repeatedly treated Ms. Coleman as capable of making important legal,  
15 financial and estate planning decisions – the same kind of decisions that Ms. Duncan and others  
16 now claim she could not have voluntarily made.

17 For example, in May 2000, Ms. Duncan met with Ms. Coleman in Ms. Duncan's office  
18 regarding revisions to the Coleman Trust. Clearly, Ms. Duncan must have concluded that  
19 Ms. Coleman was capable of revising her trust in May 2000 or she would never have held the  
20 meeting. Ms. Duncan and Ms. Coleman spoke several times after the May 2000 meeting.

21 Also, between December 27, 2000 and January 24, 2001, Ms. Duncan billed Ms. Coleman  
22 \$2,065 for legal services, most of which related to Ms. Duncan's self-appointed crusade to undo  
23 Ms. Coleman's gift to the AFCS. See Exhibit "3" ( 1/24/01 Invoice from Virginia I. Duncan, P. C.

24  
25  
26 <sup>5</sup> See Maricopa County Superior Court Case No. CV2003-019069, *Jean Ruffin Lilly, et al. v. The American*  
27 *Foundation For Charitable Support, Inc., et al.* and NASD Dispute Resolution, Inc. Case No. No. 03-05612, *Susan N. Coleman, et al. v. Smith Financial Services, Inc.*



1 to Susan N. Coleman). Ms. Duncan's unwanted "services" upset Ms. Coleman. Ms. Coleman  
2 wrote to Ms. Duncan: "Dear Virginia, Please discontinue your q-ing [questioning] of Victor S.  
3 concerning our investment relationship. All of our past investments have been with my express  
4 consent and approval." See Exhibit 2.

5 Despite Ms. Coleman's direct instructions for Ms. Duncan to stop, Ms. Duncan proceeded  
6 to have numerous conversations with third parties about Ms. Coleman's investment decisions, and  
7 Ms. Duncan billed Ms. Coleman for each conversation. See Exhibit 3 ( 1/24/01 Invoice from  
8 Virginia I. Duncan, P. C. to Susan N. Coleman).  
9

10 In addition, *on February 15, 2001, Ms. Duncan wrote to Ms. Coleman and sought payment*  
11 *of \$5,328.23 for legal services rendered.* See Exhibit 4. Any purported concern about  
12 Ms. Coleman's mental competency was absent from Ms. Duncan's collection letter.

13 In fact, there is no evidence Ms. Coleman was incapable of making the decisions that  
14 Claimants now challenge at the time Ms. Coleman made them nor can there be. The conduct of  
15 Ms. Duncan has waived any privilege that may have existed. Ms. Duncan should be ordered to  
16 comply with the Subpoena.  
17

18 **b. Ms. Coleman and/or her agents have put the information**  
19 **directly in issue.**

20 When determining whether the privilege has been waived, the courts use a three-part test.  
21 First, whether the party is asserting the "privilege as the result of some affirmative act, such as  
22 filing suit." Home Indem. Co. v. Lane Powell Moss & Miller, 43 F.3d 1322, 1326 (9th Cir.1995)  
23 (citing Hearn v. Rhay, 68 F.R.D. 574, 581 (E.D.Wash.1975)). Second, the court examines whether  
24 "through this affirmative act, the asserting party puts the privileged information at issue." Id.  
25 Finally, the court evaluates whether "allowing the privilege would deny the opposing party access  
26 to information vital to its defense." Id. Each of these elements is met here.  
27

1 There can be no question that the misleading and prejudicial letters written by Ms. Duncan  
2 have culminated in this proceeding. The Securities Division has asserted that Ms. Coleman was  
3 essentially incompetent at the time of the investments at issue. However, the limited facts  
4 available show otherwise, and the documents requested in the subpoena are evidence of  
5 Ms. Coleman's mental state, as found by her attorney Ms. Duncan, at or around the time the  
6 investments were made.

7 By engaging in her letter writing campaign to interest a state agency in Stockbridge, and  
8 the subsequent filing of the lawsuits, Ms. Coleman's agents have put her mental condition squarely  
9 in issue. Ms. Duncan's desire to withhold documents, likely to show that Ms. Coleman was  
10 competent and managing her affairs during the relevant time frame, is an attempt to prejudice  
11 Stockbridge and benefit the two pending lawsuits filed against him. The information is vital to  
12 Stockbridge's defense. Ms. Duncan cannot be allowed to use the alleged mental condition of her  
13 client as both a sword and a shield. The conduct constitutes a waiver of the privilege and  
14 Ms. Duncan should be ordered to comply with the subpoena.  
15

16  
17 **D. Ms. Duncan has not demonstrated that production of the requested**  
18 **documents would be unduly burdensome.**

19 Ms. Duncan alleges that collecting the information to respond to the subpoena would be  
20 burdensome. However, she gives no indication as to the number of boxes to be searched or the  
21 time involved. There is nothing in the objection that would enable this tribunal to determine what  
22 burden, if any, responding to the subpoena would impose.

23 Ms. Duncan cannot rely on blanket assertions of undue burden. In Arizona, "the burden to  
24 establish that a subpoena duces tecum is unreasonable or oppressive is on the party who seeks to  
25 have it quashed. He cannot rely on the mere assertion that compliance would be burdensome or  
26

onerous without showing the manner and extent of the burden and the injurious consequences of compliance.” Helge v. Druke, 136 Ariz. 434, 438, 666 P.2d 534, 538 (App. 1983).

Ms. Duncan has not shown the manner and extent of the burden claimed. She should be ordered to comply with the subpoena.

**E. Ms. Duncan is not entitled to her hourly fee as an attorney for time spent responding to the subpoena, nor for the filing of the objection.**

Pro se litigants are not entitled to an award of fees. This rule applies whether the pro se litigant is an attorney or not:

The time a layman spends in court, preparing memoranda, investigating facts, is time when he cannot be practicing his own trade--but we do not allow him an award of fees for time spent working on the case because his recoverable attorney’s fees are those he is reasonably obligated to pay his attorney, not his “opportunity” costs.

The judicial system would be unfair if an attorney-litigant could qualify for a fee award without incurring the potential out-of-pocket obligation that the opposing nonlawyer party must bear in order to qualify for a similar award.

Lisa v. Strom, 183 Ariz. 415, 419, 904 P.2d 1239, 1243 (App. 1995). Attorneys who chose to represent themselves are simply not entitled to an award of fees, or the “opportunity cost” of the representation. Ms. Duncan’s request for fees must be denied.

Ms. Duncan is entitled only to the fees set forth in A.R.S. §12-351:

All reasonable **costs** incurred in a civil action by a witness who is not a party to the action with respect to the production of documents pursuant to a **subpoena** for the production of documentary evidence shall be charged against the party requesting the **subpoena** if the witness submits an itemized statement to the requesting party stating the reproduction and clerical **costs** incurred by the witness.

1. “Reasonable costs” means ten cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing plus the reasonable clerical costs incurred in locating and

1 making the documents available billed at the rate of ten dollars per hour per  
2 person.

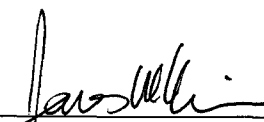
3 Ms. Duncan is entitled only to the statutorily permissible costs incurred in responding to  
4 the subpoena. Ten cents for each page copied, and ten dollars per hour per person for the time  
5 spent responding to the subpoena.

6 **IV. CONCLUSION.**

7 Most of the information requested in the Subpoena is not even arguably covered by any  
8 claim of confidentiality or privilege. Of the few communications impacted by the privilege it is  
9 clear that any privilege has been waived. Ms. Duncan should be ordered to comply with the  
10 Subpoena. In addition, Ms. Duncan is not entitled to her "attorneys' fees" incurred in attempting  
11 to evade the subpoena. Stockbridge respectfully requests that the request for fees be denied.

12  
13 RESPECTFULLY SUBMITTED this 15th day of October, 2004.

14 ROSHKA HEYMAN & DeWULF, PLC

15  
16 By   
17 Paul J. Roshka, Jr., Esq.  
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21 Phoenix, Arizona 85004  
22 Attorneys for Respondents  
23 Victor Monroe Stockbridge and  
24 G. Irene Stockbridge  
25  
26  
27

1 ORIGINAL and thirteen copies of the foregoing  
2 hand-delivered this 15th day of October, 2004 to:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered  
8 this 15th day of October, 2004 to:

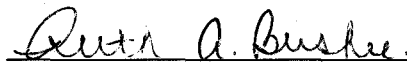
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26 COPY of the foregoing mailed this  
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29 Attorney at Law  
30 849 Cove Parkway, #B  
31 P. O. Box 3819  
32 Cottonwood, AZ 86326

33 

34 stockbridge.acc/pld/Response to Duncan's Objections.doc

## **Exhibit 1**

M&R

Virginia J. Duncan, P.C.  
Attorney at Law

01-11353

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Advocacy Section

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May 10, 2001

MAY 14 2001

Office of the Attorney General  
Elder Affairs Division  
1275 W. Washington  
Phoenix, AZ 85007-2997

RECEIVED

Attention: Juanita Chavez

CPA - C/C  
MAY 15 2001

Dear Ms. Chavez:

This letter is in response to a telephone conversation I had with you last February. In that conversation, I shared with you hypothetically some concerns I was having pertaining to one of my clients and her stockbroker. It is necessary to advise you specifically about what transpired. In our relatively brief conversation, you indicated the threshold question to be, "How did the client benefit?" After much deliberation on the issue, it is my opinion that there was little benefit to the client. In fact, there has been detriment. There has been significant benefit, however, to the stockbroker in the form of commissions from these transactions. At the risk of angering my client, who trusts and obviously relies on her broker's advice, I believe this warrants investigation. I just cannot shake the notion that this type of activity is exactly what was contemplated by the enactment of ARS §46-456.

SUSAN N. COLEMAN has been my client since 1994. My role has been primarily to assist her with estate planning matters. Sue is 70 plus years of age, lives alone and can be quite the hermit. Sometimes she will not answer her phone for days and her physical safety is a concern. She becomes very depressed, has been treated for alcohol abuse, and is tremendously indecisive. Frequently her bills go unpaid for long periods of time. She is not organized and her paperwork reflects her inattention. My work with Sue has basically been a "work in progress" because of her struggle with making decisions. As I mentioned, we began working together in 1994 and finally, in 1996, we were able to finalize a trust for her.

It was a time-consuming process, as Sue has limited family and mostly, she is philanthropically inclined. She had trouble deciding on the charitable groups she wished to include, partially due to the fact that she was not current with what was "out there", and what the various missions of the organizations were. So we

plugged along, and finally she was comfortable with her dispositive provisions, understanding, however, that certain of her distributions could and should be further studied and clarified. It was a start. She would make some charitable donations annually, but our primary focus together was death distribution planning.

Sue's closest family is her sister, Elizabeth Mooney (Betty) <sup>phone # redacted</sup> who lives in New York. In December, 1999, Sue gave Betty a durable power of attorney. Betty is also nominated as her successor Trustee. Sue, however, has not really confided in her sister or kept her apprised, as she is very private. Only just recently did Sue authorize that Betty receive a copy of the trust.

Another important person in this case is Sandy Moriarty, of Walker & Armstrong, a CPA Firm. The firm has been Sue's accountant since 1974. Sandy (520-282-4016) knows her well. As her income tax preparer, she has been very involved in the situation triggering this letter.

Sue's stockbroker, Victor Stockbridge, of Smith Financial Services, Inc., is the reason for this letter. They are friends attending the same church (back when she attended church). Both Mr. and Mrs. Stockbridge visit Sue and check in on her relatively frequently. When Betty or Sandy or I would be concerned, we would call Vic and ask him how she was doing. He had the most frequent and regular personal contact. He did not have her power of attorney, but he would help her with her paperwork and assist her with paying her bills. The Stockbridges were among the few people Sue would invite into her home. Others, myself included, have just been met at the door on occasion. She trusted him and he did help her.

Sue was a residual beneficiary of two trusts established many years ago, being administered most recently by PNC Bank. In late 1999, the last remaining income beneficiary died, and Sue's entitlement was approximately 6 million dollars total from the two trusts. Sue came to me so we could continue planning in preparation for this bequest. The first of March, 2000, Betty called to advise that the trusts were starting to distribute. Sue and I met on March 9, 2000, with Kristi Edwards of the Arizona Community Foundation to discuss their programs and the possibility of working with that organization.

After the meeting with Ms. Edwards that day, Sue informed me that she was expecting a rather large cash distribution that week and asked me to call her local bank to see if it had arrived, and to keep her posted. It was too large of a sum to sit in her regular account, so we let her banker know it was expected. It did not come, and did not come, and we were then advised by the banker that PNC had been instructed to send the funds directly to her accounts with Stockbridge. Sue did not recollect signing these authorization papers. Other than her memory lapse, I was not then too concerned.



At Sue's request, I called Vic on March 22, 2000, to confirm that he was in receipt of the funds. He advised that the assets were not 100% transferred. We discussed the potential tax consequences of this distribution due to the old tax cost basis considerations, and I advised him to keep everything "in-kind" until we had the opportunity to review this carefully with the accountant. As it turns out, her brokerage statements now show that he had sold all of the bonds distributed on March 16, 2000, but said nothing, and all the stocks had, in fact, been received by then.

Only the Blackrock Mutual Funds and the Kentucky Tax Free Bond Fund were remaining and were to be sold by PNC Bank.. It appears the proceeds from these sales went directly to purchase one or more annuities.

Sue and I met again in my office on May 15, 2000, to discuss further revisions to her existing trust document. We spoke several times shortly thereafter, and then, once again, Sue stopped answering her phone for a period. Per our customary routine, I called Vic on July 14, 2000, to see if he had seen her recently. He said that she had again "gone into a funk" and that she had not been allowing him in her house either. Periodically I would call Sue, and still there was no answer, or if she did answer she was not feeling well. So, on October 4, 2000, I called Vic again. During this conversation he advised me that he had set up a family foundation for Sue with over 3 million dollars of her PNC trust distribution. It was a done deal, the money was gone, gifted to the American Foundation. Needless to say I was shocked, so I immediately contacted both the accountant and her sister. Neither of them knew anything about it either, even though Betty had been named as the successor manager of the fund. Vic had not consulted with either of her professional advisors or her sister as power of attorney. And, no one from the American Foundation ever met with Sue personally in spite of the fact they received a gift in excess of 3 million dollars!

Vic's responses to my consternation that he did not consult with her accountant, her Power of Attorney, or me were "I'm sorry you're not happy" and "It's a good gifting source". I requested copies of the agreement with the Foundation and records of her accounts. The accountant and I were quite concerned about the tax consequences of his actions. Then, the quest for information about what transpired began. Instead of reiterating all the correspondences, I have enclosed copies for your convenience. In summary, all documentation pertaining to Sue's accounts were requested.

There were numerous meetings and conversations with Sandy, Verne Smith (Vic's supervisor), Vic, Nathan Trevort (a representative from the American Foundation) and Sue (although her participation has been minimal). Sue did not recollect establishing the Foundation, and you will see a letter of authorization from her to obtain records from both Vic and PNC Bank. Some records have

been provided to Sandy and I over the last six months in a piece-meal manner. We were not even given complete copies of her brokerage account statements for last year until April 18, 2001. The accountant had to personally obtain the confirmation of the exact amount of the gift from the Foundation in order to prepare the extension for Sue's tax returns. We were surprised to learn that she had also gifted cash to the Foundation, as well as securities. There is a discrepancy between the detailed inventory list of stocks and cash donated provided by the American Foundation and their letter of acknowledgment and Form 8283 which is still not resolved.

Also, we still do not yet have all the information repeatedly requested. For example, it is important to verify the amount of her estate prior to the PNC distribution. Sue had advised me that it was a different amount than Vic told us at one of our meetings. He has yet to produce verification of her prior holdings.

Here is what we do know. The Foundation account was set up by Vic (with Sue's "consent", but with no true understanding). Sue also had her "regular" brokerage account in the name of her personal trust with Vic. Stocks and bonds from the PNC distribution were transferred to Sue's brokerage account. The bonds were subsequently sold and the stocks were transferred into the newly created "Foundation" brokerage account. The stocks were then sold from that account. The proceeds from the sale of both the stocks and bonds were all used to purchase annuities, some in her trust name and some in the name of the Foundation. Vic would have received commissions on all of the sales as well as the numerous annuity purchase transactions.

In her "regular" trust account, Vic also has her invested primarily in annuities. How suitable is 3 million dollars in annuities in her personal trust? How suitable was it for him to create this Foundation and also fund it with 3 million dollars in annuities? Vic has undoubtedly received substantial commissions from these various transactions, although he has not confirmed a total amount. Back to the threshold question, however, how has this benefited Sue? I do not think it has.

She has lost the benefit of the income from the 3 million dollars diverted to the Foundation. Granted, she can direct gifts from that entity, but I submit that she will not do so based upon her history. Further, she does not yet fully understand how it functions. To illustrate that point, Sue gifted to charities a total amount of \$100,000 for the year 2000. She made these gifts from her **personal account**! So, not only did she "give" the original 3 million dollars, there is an additional gift of \$100,000. For certain in the year 2000, the Foundation was no benefit to her as a gift source; she did not use it.

She has also lost the ability to ever give those 3 million dollars in principal to anybody or any other charitable organization. She has been permanently

deprived of these funds. What if she needs or wants more money? Why does she need to be paying for life insurance within these Foundation annuity vehicles? How is this a benefit? Even if the Foundation was a suitable entity for her, the stocks could have been distributed to it in-kind without tax consequences. How were these numerous transactions generating commissions to Vic a benefit to her? Similarly, the same questions arise as to the suitability of annuities as her only personal investment vehicle.

Sandy and I scheduled a meeting with Vic for January 18, 2001. We had not yet received the information requested concerning the Foundation Agreement and many other items. Vic was told by Verne Smith to obtain this data. Vic went to Sue's house on January 16, 2001, which was an icy, heavy snow day. Numerous businesses were closed, and I recollect even my assistant had trouble making it in to work that day. The reason this is so significant in my mind is that this very same day, Sue mailed me a letter (somehow it got to the post office in spite of the snow), which instructed me to stop questioning Vic and to advise Sandy accordingly. When that letter was received by my office on January 17<sup>th</sup>, Sandy and I had no choice but to cancel the January 18 meeting with Vic. Later, I called Sue and, even though she recalled the letter, she could not, or would not, tell me why it was written, and authorized us to continue trying to collect the information we needed. Much of this information had a direct bearing on the preparation of her 2000 income taxes. Vic's visit with her that day was suspiciously coincidental with her letter.

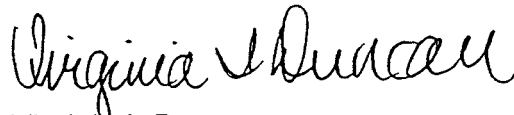
This whole situation has been very disturbing. We live in a small community and we have given Mr. Stockbridge the benefit of the doubt time and time again. His actions and lack of timely communication and cooperation has cost Sue several thousands of dollars in attorney's and accountant's fees. His lack of judgement in failing to consult with her other advisors is of great concern. Then, when questioned, his response is indignation. He was in a confidential relationship with Sue, and influenced her to act solely on his advice which has benefited him greatly. We worry about other similar situations that might be occurring in this community. We are advised that Mr. Stockbridge has a Series 7 license and some independent investigation indicates that he may already have one (1) U-4 complaint against him. Vic claims that the commissions he received did not come out of Sue's pocket. She has certainly paid in other ways, however.

Far too much time and energy has been wasted attempting to gather information which should have been readily available. It is important for your office to ascertain whether Vic's actions were appropriate or clearly exploitive. Sue did not need to gift such a substantial sum. It is my opinion that she did not understand the ramifications, and Vic personally benefited from her trust and vulnerability.

I am filing this complaint without Sue's knowledge or permission. I believe I have a duty to report this. I have reason to believe that this may not be an isolated incident.

Please do not hesitate to contact me if you wish to discuss any of this further. I would appreciate hearing from your office once you have had the opportunity to review this letter. We await your assessment.

Sincerely,

A handwritten signature in cursive script that reads "Virginia I. Duncan". The signature is written in black ink and is positioned above the printed name.

Virginia I. Duncan

VID/skr

cc: Sandy Moriarty  
Betty Mooney

## **Exhibit 2**

Dear Virginia,

Please discontinue your Q-ing of  
Victor S. concerning our investment  
relationship.

All of our past inv.'nts. have been  
with my express consent +  
approval

Please advise Sandy accordingly.

Sincerely

Jae  
Jesse N. Coleman

### **Exhibit 3**

*Virginia I. Duncan, P.C.*

70 Payne Place  
Sedona, AZ 86336

Ph: 520-282-4117

Fax: 520-282-4365

Susan N. Coleman  
171 Prochnow Road  
Sedona, AZ 86336

January 24, 2001

File #: Coleman-S  
Inv #: 1140

RE: Estate Planning

DATE	DESCRIPTION	HOURS	AMOUNT	ATTY/ASST
Dec-27-00	Phone conference with Sandy, phone call to Verne's office	0.30	52.50	VID
Dec-28-00	Phone conference with Sandy and concerns expressed by her Phoenix office, call to Verne's office, second conference with Sandy regarding status and year end planning problems due to lack of information	0.45	78.75	VID
	Phone call from Verne regarding status, Vic's lack of response	0.20	35.00	VID
Dec-29-00	Phone conference with Sandy regarding her conversation with Verne, no ability to do anything prior to year end	0.10	17.50	VID
Jan-02-01	Attention to status, phone conference with client	0.25	43.75	VID
	Conference with Walter regarding status, organizing of paperwork for client	0.25	0.00	VID
Jan-04-01	Phone calls with Sandy regarding developments, her review of information from bank	0.40	70.00	VID
	Further phone conference with Sandy regarding PNC information and tax consequences	0.60	105.00	VID

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	Phone call from Sandy regarding further discoveries, capital gains, whereabouts of rest of distribution, phone call to Verne's office	0.50	87.50	VID
Jan-05-01	Phone conference with Sandy regarding further concerns, how to address situation	0.40	70.00	VID
	Phone call from Sandy regarding possibility that all holdings sold, tremendous ramifications	0.40	70.00	VID
Jan-06-01	Study exploitation statutes as applied to these facts	0.40	70.00	VID
Jan-07-01	Study information from PNC, Vic and Sue, summarize holdings, values, prepare for meeting	0.90	157.50	VID
Jan-08-01	Review correspondence file	0.20	35.00	VID
	Meeting with Sandy and Verne regarding status of accounts	1.50	262.50	VID
Jan-10-01	Preparation of letter to Verne, phone conference with Sandy to confirm action items	0.40	70.00	VID
	Attention to information forthcoming from Verne Smith regarding the investments of the PNC Bank funds.	0.50	40.00	SKR
Jan-11-01	Coordinate meeting with Stockbridge, Smith, Moriarity, Foundation representative, and Attorney regarding Foundation funding	0.60	48.00	SKR
Jan-13-01	Review letter from Verne, instructions to assistant	0.20	35.00	VID
Jan-16-01	Attention to further information and uses for trust family foundations, forward information to Sandy	0.20	35.00	VID
Jan-17-01	Phone call from wholesaler regarding commissions on Seasons account	0.20	35.00	VID
	Phone conference with Sandy	0.10	17.50	VID
	Phone conferences with Verne, Vic, Sandy regarding further ramifications, cancellation of meeting, sale of stock, concerns	1.00	175.00	VID

	Attention to Sue's letter, forward to Sandy, phone conference about ramifications	0.60	0.00	VID
Jan-18-01	Phone call from broker regarding status	0.60	105.00	VID
	Phone call with Sandy regarding account	0.20	0.00	VID
	Phone conference with Betty regarding status, instructions from Sue not to investigate further	0.60	0.00	VID
	Phone conference with Sandy regarding instructions from client, further information needed	0.40	0.00	VID
Jan-19-01	Phone conference with Betty, phone call to Sue asking her to reconsider instructions	0.60	105.00	VID
	Phone conference with Sandy regarding approval to proceed obtaining information	0.30	0.00	VID
Jan-22-01	Phone call from Betty regarding status	0.20	35.00	VID
	Review information from Vic, forward to Sandy, phone conference with Sandy regarding information	0.40	70.00	VID
Jan-23-01	Attention to legal test for gifting	0.25	43.75	VID
	Phone conference with Verne, Sandy regarding reschedule meeting	0.20	35.00	VID
	Phone conference with Sandy regarding agenda for meeting	0.25	43.75	VID
Jan-24-01	File maintenance for period ending 01/24/01	0.20	8.00	AJF
	Totals	14.85	\$2,056.00	

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PLEASE SEE TOTAL ON NEXT PAGE →

Total Fees & Disbursements	\$2,056.00
Previous Balance	\$3,272.23
Previous Payments	\$0.00
Balance Due Now	\$5,328.23

This invoice is due and payable in full within ten business days. It may not include items for which we have not yet been billed. If you have any questions, please call Alice at 520-282-4117 so we may efficiently serve you. Thank you for choosing Virginia I. Duncan, P.C. to serve your legal needs!

ACC02368  
S-3465-A

## **Exhibit 4**

*Virginia I. Duncan, P.C.*  
Attorney at Law

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70 Payne Place  
Sedona, AZ 86336  
(520) 282-4117  
Fax (520) 282-4365  
Email: virginia.duncan@azbar.org

February 15, 2001

Susan N. Coleman  
171 Prochnow Road  
Sedona, AZ 86336

RE: Susan Coleman

Dear Sue:

As of this date, we still have not received any payment on your long outstanding bill with this office. Enclosed is another copy of the last statement for your convenience.

Your prompt attention to this matter would be most appreciated. Enclosed is a stamped self addressed envelope for your convenience.

Thank you.

Sincerely,

*Virginia I. Duncan*  
Virginia I. Duncan

VID/skr

Encl.

**ACC02364**  
S-3465-A